

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:08CV592-03-MU

HAIBER MONTEHERMOSO, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
NC DEPARTMENT OF CORRECTION )  
et.al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court on initial review of Plaintiffs' Complaint under 42 U.S.C. § 1983, filed December 19, 2008. (Document No. 1. )

In Plaintiff's conclusory Complaint Plaintiff contends that he "need[s] to get the "Adequate Medical Care" and get [his] Tennis-shoes (sic) ordered by the Doctor A.S.A.P, Moreover, for the Malpractice, pain and suffering among other things; – Compensatory, nominal and punitive damages." (Complaint at 3.)

First, the Court notes that Plaintiff failed to sign his Complaint as is required by the Federal Rules of Civil Procedure. See Fed. R. Civil Proc. 11. Next, it seems to the Court that Plaintiff's chief complaint is that the North Carolina Industrial Commission issued an Order dismissing his case for failure to comply with Rule 9(j) on November 20, 2008 after ruling on October 31, 2008 that he had until January 15, 2009 to produce an affidavit from a medical doctor to comply with Rule 9(j). From Plaintiff's attachments to his Complaint, it appears to this Court, that Plaintiff has filed a motion for reconsideration with the North Carolina Industrial Commission of the Court's Order

dismissing his case. This Court does not have jurisdiction to override decisions of the North Carolina Industrial Commission. Indeed, any appeals of Industrial Commission decisions would be to the North Carolina courts, not this Court.

Finally, Plaintiff's Complaint must be dismissed for failure to state a claim for relief. A cause of action pursuant to 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution or other laws of the United States by a person acting under color of state law. Plaintiff's conclusory Complaint fails to state a claim under the Eighth Amendment for deliberate indifference to his serious medical needs. Furthermore, to the extent Plaintiff is attempting to pursue a negligence claim, negligence does not state a constitutional claim. Estelle v. Gamble, 429 U.S. 97, 105-06 (1976); Daniels v. Williams, 474 U.S. 327 (1986).

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiffs' Complaint is Dismissed for failure to state a claim for relief.

**SO ORDERED.**

Signed: December 23, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

